

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 HUNG VAN NGUYEN,

10 Petitioner,

11 v.

12 JEFFREY UTTECHT,

13 Respondent.

Case No. C16-1711-JCC-JPD

ORDER STRIKING ANSWER AND  
DIRECTING RESPONDENT TO  
SUPPLEMENT THE RECORD

14 This is a federal habeas action filed under 28 U.S.C. § 2254. Petitioner's federal habeas  
15 petition is currently ripe for consideration. This Court has now reviewed all of the briefing of the  
16 parties as well as the state court record submitted by respondent in conjunction with his answer  
17 to the petition. Absent from the state court record are copies of the transcript of petitioner's trial  
18 and the trial court's instructions to the jury. It appears that these materials are necessary to this  
19 Court's resolution of petitioner's federal habeas claims. Accordingly, the Court hereby  
20 ORDERS as follows:

- 21 (1) Respondent shall submit to the Court, not later than **Friday, April 28, 2017,**  
22 copies of the transcript of petitioner's trial and of the trial court's instructions to  
23

1 the jury. Petitioner's federal habeas petition is **RE-NOTED** on the Court's  
2 calendar for consideration on that date.

3 (2) In addition, the Court STRIKES respondent's Answer to the habeas petition, Dkt.  
4 30, as the brief does not cite to the trial transcript and therefore does not sufficiently respond to  
5 petitioner's claims. This is particularly true with respect to petitioner's ineffective assistance of  
6 counsel claims raised in Grounds 2, 5 and 9, and his prosecutorial misconduct claim raised in  
7 Ground 3. Respondent shall re-submit the Answer by no later than **Friday, April 28, 2017**, with  
8 a more thorough – and less conclusory – analysis with respect to each of petitioner's habeas  
9 claims. Respondent's Answer shall include adequate citations to the trial transcript and other  
10 relevant exhibits.

11 (3) With respect to petitioner's final habeas claims (Grounds 6 and 7), respondent's  
12 brief does not explain how the sentencing enhancement for a firearm differed from that for use of  
13 a deadly weapon. Respondent should more thoroughly explain his argument that petitioner was  
14 not prejudiced by the imposition of a deadly weapon enhancement when petitioner was charged  
15 with a firearm enhancement. Respondent is also directed to provide the deadly weapon special  
16 verdict instructions that were submitted to the jury relevant to petitioner's claims.

17 (4) The Clerk is directed to send copies of this Order to petitioner, to counsel for  
18 respondent, and to the Honorable John C. Coughenour.

19 DATED this 13th day of April, 2017.

20   
21 JAMES P. DONOHUE  
22 Chief United States Magistrate Judge  
23